

**ZONING BOARD OF ADJUSTMENT  
OCTOBER 7, 2015 MEETING  
DRAFT MINUTES**

Board members present included Chairman Christopher Carley, Nicholas Wallner, Andrew Winters, James Monahan and Rob Harrison. Also present was Zoning Administrator Craig Walker and Clerk of the Board Rose Fife.

**29-15 REHEARING REQUEST - [Jim Netto](#):** Applicant wishes to legitimize an existing pergola and requests a variance to Article 28-4-1(h), The Table of Dimensional Regulations, to permit a structure with a 6" side and a 6" rear setback for footings and no setback for the rafter extensions where a 10' side and 20' rear setback would be required for property at 52 Chesley Street located in an RD Residential Downtown District.

Winters stated that the owner has made significant modifications. It looks like a new variance request for a new project or different proposal as opposed to an error having been made by the Board. Wallner said that the owner seems to have done 2 things to the structure so he feels it is materially different than what was previously presented to the Board. Monahan stated that the owner is trying to legitimize something and it strikes him the reasons he state for a rehearing request are more reasons for a new request than a rehearing.

DECISION: A motion to deny the rehearing request was made by Wallner as he felt evidence presented was more consistent with a request for a new case, seconded by Harrison and passed by a unanimous vote.

**Public Hearings**

**32-15 [Richard Uchida For Saint Paul's School](#):** Applicant wishes to construct a 4 unit multi-family dwelling for faculty housing and requests the following:

1. Variance to Article 28-2-4(j), The Table of Principal Uses to permit a multi-family dwelling in an RO Residential Open-space District where such use is not permitted,
  2. Variance to Article 28-4-5(d)(3), Building Dimensions and Separations, to permit detached garage unit to be within 10 feet of the dwelling unit when a minimum 40 foot separation is required between all buildings,
  3. Variance to Article 28-4-5(d)(5), Perimeter Buffer Required, to permit the development of a multi-family dwelling without providing the required perimeter buffer around the perimeter of the tract,
- for property located at 199 Dunbarton Road in an RO Residential Open-Space District.

Attorney Richard Uchida of Hinckley Allen testified. Paul LaChance, Associate Director of Facilities and Chris Nadeau of Nobis Engineering were also available to testify.

St. Paul's wants to construct a 4 unit faculty housing faculty with 3 detached garages. Multi-family dwellings are not permitted in an RO Zone and building separation relief is needed for the garages. They also need relief to the perimeter buffer requirement.

The lot is 57-58 acres in size. It is surrounded by Turkey Pond, Interstate 89, Dunbarton Road and Silk Farm Road. St. Paul's is their own abutter. Attorney Uchida passed out GIS aerial photo. He showed the Board, on the map, where the property they would be building on is situated. The RO Zone encompasses the whole lot. The main part of their campus is on the adjacent institutionally zoned district. This use would be allowed in that zone. There is a 2 unit farm house structure that was built around 1850 or so along with accessory buildings that they want to take down and replace it with a 4 unit building to house faculty. They would also like to build 3 detached garages and 2 attached garages. It will be served by City water and sewer. The garages are different than what is on the original site plan submitted. They moved the garages 30-36 feet away from the multi-family structure which is closer to the 40 feet requirement. The garages will be unoccupied. To the east this use would be allowed. They have looked to see if there was land available inside the institutional district, but due to topography, buffer restrictions and ledge there wasn't any to be found. They looked at renovation of the existing facility but it is very old and not in great shape. The 40 foot building separation is for fire and aesthetics and they do not think the detached garages would encroach on either fire or aesthetics. The perimeter buffer

would mean they would need to put one around the entire parcel. They want to integrate the site into the campus. The plan will need minor site plan approval from the Planning Board.

In favor: none.

In opposition: none.

Code: none.

DECISION: A motion to approve the 3 requests was made by Harrison, seconded by Monahan and passed by a unanimous vote.

Monahan asked Walker if the existing structure is on City water and sewer. Walker asked LaChance who stated that it is on City water but has its own septic system. Winters felt it is a reasonable use of the property, providing housing for faculty is a reason accessory use on the campus. He thinks it would be a hardship if they couldn't put it here as they have explored the IS zone. Harrison agrees.

**33-15 Lake Sunapee Bank:** Applicant wishes to establish a bank with a drive-through teller window (Principal use F-1) and requests a Variance to Article 28-7-2(e)(F), Table of Off-Street Parking, to permit the provision of 3 compliant stacking spaces for the drive-through window when 5 stacking spaces are required for property located at 8 Loudon Road (Building 1) in a GWP Gateway Performance District.

Tim Bernier, TF Bernier Inc. testified. He handed out a revised colored site plan. The site is located on Loudon Road in the post office development next to Buffalo Wild Wings and Convenient MD. Lake Sunapee bank would like to utilize 3800 s.f. at the (south) end of the building that has Convenient MD in it and put in a drive thru lane. The zoning requirements for a bank are that they provide 5 stacking spaces. They are proposing to relocate the dumpster pad and the 5<sup>th</sup> stacking space would interfere with access to dumpsters and technically interfere with 24 foot travel lane. This is the most remote section of the parking lot. They anticipate the employees of the bank will park there in this section of the parking lot. The regulations were set up to prevent any stacking ending up out in the street. This will not happen. Lake Sunapee Bank said that if they have 2 vehicles at the window they would consider that being busy. On line banking has increased so people coming in have decreased. The relief will not block the travel lane. The interference with the dumpster is minor.

Walker noted that the plans submitted with the application show a different stacking configuration, where the plan submitted with the application shows half of the 4<sup>th</sup> car and all of the 5<sup>th</sup> car blocking the dumpster the plan handed out tonight shows only the 5<sup>th</sup> car blocking the dumpster. Tim Bernier stated that they are required to obtain major site plan review from the Planning Board. Walker stated that the Zoning request was written up for the original plans submitted, not the new one submitted tonight. Harrison stated that the larger plan shows blocking one parking space with the dumpster. Tim Bernier agreed and said that they eliminated the parking space as they do not need it. Carley wanted confirmation that the only difference between the two plans is the dumpster pad and 3 bushes. Tim Bernier said that was correct. Winters asked if there would be 4 stacking spaces. Tim Bernier said that there are. Winters asked if the dumpster in a fixed spot. Bernier stated that the dumpster is on a concrete pad, screened with landscaping so yes.

In favor: none.

In opposition: none.

Code: Craig Walker stated that this project will go through the major site plan review process. There will be one waiver that will be part of that request. The stacking requires a by-pass lane per the Planning Board requirements.

DECISION: A motion to approve the request based on the original submitted plan was made by Harrison, seconded by Monahan and passed by a unanimous vote.

Harrison felt it was a reasonable use of property.

**34-15 Carol Chumak:** Applicant wishes to revert a single-family home to a two-family home and requests the following to permit a conversion of a single-family dwelling to a two-family dwelling:

- 1) Variance to Article 28-5-3, Conversion of a Residential Building, Section (b)(1), Minimum Lot Size, to permit the conversion with a lot size of 8,900 SF +/- (per GIS) where 10,000 SF would be required,
  - 2) Variance to Article 28-5-3, Conversion of a Residential Building, Section (b)(2), Other Dimensional Requirements, to permit a two-family conversion on a lot with 65 feet +/- of frontage where 80 feet of frontage is required,
  - 3) Variances to Article 28-7-7(g)(2), Setbacks and Restrictions, to maintain parking/driveway with no set back from a property line when a 5 foot setback is required,
- for property at 119 Rumford Street in an RN Residential Downtown District.

Carol Chumak testified. She has owned house since 2000. It was a 2 family at that time and listed as such with Assessor's office. They applied for a permit in 2000 to convert the home to a single family. For family reasons that conversion never took place. The house is still maintained as a 2 unit home with 2 hot water tanks, 2 heating systems, 2 gas lines, etc. She is looking to legitimize it as a 2 family home again so that it is marketable and she can sell it. Most of homes in the area are 2 family homes; therefore this is consistent with the neighborhood. Carley asked if she had ever had a tenant. Ms. Chumak said she had not. She had a large family and needed the room. Carley asked Walker if they had enough parking. Walker stated that they did have enough parking. Ms. Chumak said there are 4 parking spaces. She also said that 90% of the people looking at the home would like it to be a 2 family as it is a large home. It is 2800 s.f. with 3 livable floors and an unfinished basement. Winters asked if it had been listed and had tested the market. Ms. Chumak said that it was on the market, but she received a letter from the City saying it is a 1 family. While the home was on the market it was viewed more as a multi-family home than a single family home.

In favor: none.

In opposition: Tom Ryan. He is the direct abutter to the south. He has lived there for almost 30 years. He did purchase his home when the Chumak property was a 2 family. Since 2000 it has essentially been a single family. He is concerned with the application for the variance for the driveway setback as the property line is 15-18 inches from his home and the cars park right there. In the last 10 years, with the single family use, the driveway has been filled at times with noise levels in his home being substantial. The neighborhood is a mixture of single family and multi-family homes. He is opposed to the conversion because of the opportunity for increased cars, increased parking and vehicles spilling out onto the street. He spoke with the Engineering office of the City and was told that there are up to 10,000 cars a day on Rumford Street (an increase since 2000). Concerned with intensity of the variances.

Carley asked if he moved before the current owners were there. He moved in while that property was a 2 family and he has experienced it as a 2 family. Harrison asked if there were troubles when it was 2 family. He stated that yes there were. The noise and the intensity of the use. Winters asked if there are a lot of 2 families in the area. Mr. Ryan said that there were but he has substantial buffer from them.

Code: Walker added that there were also other factors that were part of an overt discontinuance of 2 family use. There was the removal of the 2<sup>nd</sup> kitchen and the removal of doors and interconnecting doors of 2 units as well as expansion into the third level. Harrison asked if they had done some renovations to convert to a single family use. Walker said that they had.

Rebuttal: Carol Chumak stated that she removed the doors as she has an autistic son. They were removed for safety reasons. The kitchen removal was done as there was a gas stove on the 2<sup>nd</sup> floor and she worried about her special needs son. In 2007 she separated from her husband and became a single mom and she planned to replace the appliances and doors when she put the home on the market, but unfortunately the costs exceeded her budget. Wallner asked if there were any other modifications to the kitchen. She stated that she took the cabinet doors off and removed the refrigerator and dishwasher.

DECISION: A motion to approve the requests was made by Harrison, seconded by Wallner and passed by a unanimous vote.

Monahan asked about item 3 on the agenda. Winters stated that in general the Board has heard this type of situation where the setback wasn't feasible for the driveway. Harrison feels that when the house was originally constructed it was

intended to be a 2 family. Carley asked when the house was built. Ms. Chumak said the house was built in 1890 and there was an apple orchard behind it. Winters felt that the marketability element of her case has a lot of merit because the Board has some general knowledge in this area that a 2 family home is much more marketable. It is a reasonable use of the property. Harrison asked if it is not converted to a 2 family, it would be a financial hardship. Winters feels it would be hard to sell as a single family in that area at this time. Carley: there is judicial precedent allowing consideration of financial hardship. Typically the Board has not looked at inability to enhance the value of the property as representing a hardship except in certain situations. Carley is inclined to look in favor of the request. Walker stated that in this particular instance the value of the property is significantly more as a single family more than if it were a duplex. Approximately \$41,000 more. There is assessment sheets included in the packet. Monahan stated that the application talks about marketability of the home, not the assessed value. Harrison felt that it was a 2 family at one time and they chose to use it as a single family. It is a reasonable use. Wallner said that the history of the building and history of the community tends to be more multi-family dwellings. The noise can happen with a large family in a single family home.

**35-15 Dennis Molnar/Concord Craft Brewing:** Applicant wishes to establish and operate a Nano Brewery in accordance with RSA 178:12-a, Nano Brewery License, and requests a Variance to Article 28-2-4(j), The Table of Principal Uses, to permit the "bottling of beverages" (principal use L-6) where such use is not permitted for property located at 2 North Main Street in a CBP Civic Performance District.

Dennis Molnar testified. He would like to establish a nano brewery in the downtown area of Concord. He is limited by RSA, state law, to 2000 barrels of beer a year, which is a remarkably small amount. Under the RSA's there are 2 forms of brewer. A brewery or a brew pub. A brew pub serves food. He wants to produce handcrafted small batches of beer. They would only offer beer on site for tasting. They would not offer food or beverages for sale. Any beverages purchased on site would need to be taken off site. Concord is one of the few Cities that do not have their own brewery. They will be outside the retail district if they located in a district where bottling of beverages is permitted by right.. They would take advantage of foot traffic by being in a retail district. They liken themselves to a bakery type of use. They could keg it and sell it to restaurants. They could simply sell from the store itself, but then they would only have one location and longer hours. That was not their intention. The scale of the nano brewery is 2000 barrels per year; each barrel is about 31 gallons. He could combine with a restaurant and brew there and he wouldn't need to be before the Board.

Monahan asked if they would have deliveries. How many trucks in and out. Mr. Molnar said that they would be lucky to get a delivery of a pallet every month. Typically not an 18 wheeler, but a shorter based truck, possibly a 6 wheeler. The intent would be to have them pull along Kennedy Street or even pull in the morning on Pleasant Street. They will have packaging supplies also delivered. A pick-up truck would take the product out.

In favor: none.

In opposition: none.

Code: Walker there is a retail component, but there is a significant wholesale component which is why this request was put into the category that it was (manufacturing). There have been internal (staff) discussions regarding nano breweries. He gave the board a copy of the State RSA regarding this type of business. They will be proposing a new category in the Zoning Ordinance for this type of use to be allowed in districts where retail uses are permitted. But, that will be 3 to 5 months down the road before it gets through the process.

**DECISION:** A motion to grant by the request was made by Winters, seconded by Harrison and passed by a unanimous vote.

Winters stated that it doesn't seem like this type of operation wouldn't work in the industrial area, however the foot traffic is important to the business. It would be a reasonable use and relief to be able to be in this location. It is a reasonable use. Monahan stated that the nano brewer statute has its own limitations to how big the operation can be and should not grow to be out of character with the surrounding uses.

**36-15 Chartwell Properties, LLC/John Wolters:** Applicant wishes to subdivide a property with existing buildings which will result in non-compliant setbacks and requests a Variance to Article 28-4-1(h), The Table of Dimensional Standards, to permit a minimum setback of 2.1 feet (+/-) for the existing building where a rear setback of 25 feet and side yard setbacks of 15 feet are required for property located 1 Penacook Street, easterly of the intersection of Penacook Street and Merrimack Street (Penacook) currently known as map/lot 053P-7 for that portion of the lot located in the RM Residential Medium Density District.

John Sokul, Attorney for the applicant and agent for the property owner testified. They have some land they can purchase that is owned by the railroad. His client owns the small warehouse building which is about 5000 s.f. and is a separate taxed parcel. They now lease the land around the building from Northern Railroad. Everything to the west of the railroad will be sold to his client. On the southern piece they would have 100 feet of frontage left. This will allow the consolidation of the ownership of the building and land. The property line is sited as far away from the property as possible. The building has existed since 1955. The building will stay and railroad tracks will remain. There is a boat launch operated by Briar Hydro that is open to the public. If his client buys this property this boat launch will remain.

Harrison asked if the building was an old Rivco storage building. Attorney Sokul said it was. What is the building being used as now. Attorney Sokul stated that the building is used for storage and Tom Cheney has some inventory in that building for his furniture store. Carley asked about the issue of access. He understands there is a dirt road down there now to a little parking area and a boat launch. Is there an easement now? Attorney Sokul said there is no easement. People are walking over the property to get to the boat launch. There has been jersey barriers put up that are being ignored.

Monahan asked if there were no other structures on either parcel. Attorney Sokul said there is just the storage building that exists.

In favor: Jonathan Carey, abutter. He lives to the west. He has a couple questions. He wanted clarification regarding the property line and why it couldn't be moved. Carley will ask Atty. Sokul to address it. His second question is regarding the subdivision of the lot not to make any changes to the use of the property. With this change of ownership would there be a change for future use of the building? Carley stated that the appeal that they are making now states no changes are being made. The use could be changed, but not to something that is not already allowed in that zone.

In opposition: none.

Code: none.

Rebuttal: Attorney Sokul stated that they would like to have more room behind the building as well but the constraints are the railroad tracks.

DECISION: A motion to grant the request was made by Harrison, seconded by Winters and passed by a unanimous vote.

Harrison felt it was a reasonable request.

#### OTHER ITEMS

MINUTES: A motion to approve September 2, 2015 Minutes was made by Wallner, seconded by Harrison, passed by a unanimous vote.

A TRUE RECORD ATTEST,

Rose M. Fife, CLERK  
ZONING BOARD OF ADJUSTMENT